

**CERCLA SECTION 122(h)(1) CASHOUT AGREEMENT
FOR ABILITY TO PAY**

07

OFFICIAL RECORD
EPA REGION VI

IN THE MATTER OF:)	AGREEMENT
)	
the Star Lake Canal Superfund Site)	U.S. EPA Region 6
Port Neches, Jefferson County, Texas)	CERCLA Docket No. 06-02-07
)	
Calabrian Corp.)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and redelegated by the Regional Administrator to the Director, Superfund Division, by EPA Delegation No. R6-14-2 (March 21, 2002). This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Associate Attorney General.

2. This Agreement is made and entered into by EPA and Calabrian Corp. ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Star Lake Canal Superfund Site ("Site") located in Jefferson County, Texas. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future.

5. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and



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7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to address its alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any

successor departments, agencies, or instrumentalities of the United States.

e. "Fair Market Value" shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "Fair Market Value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "Fair Market Value" shall mean the balance of Settling Party's mortgage on the Property at the time of the transfer.

f. "Financial Information" shall mean those financial documents identified in Appendix A.

g. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.¹

h. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

i. "Parties" shall mean EPA and Settling Party.

j. "Property" shall mean that portion that is owned by Settling Party as of the effective date of this Agreement. The Property is located at Calabrian Corporation, 5500 Highway 366, in Port Neches, Jefferson County, Texas, and is designated by the following property descriptions:

Parcel 1:
Port Neches
LT 8 TR 4
BLK 8 RG C
PALCO 6.790 AC
Combined with #049402-005850

Parcel 2:
Hogaboom Rd Port Neches
L8 B8 RG C T4 L1 B9 RG C T2
L2 B9 RG C T3 PALCO
14.150

The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/budget/finstatement/superfund/int_rate.htm.

k. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

l. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

m. "Settling Party" shall mean Calabrian Corporation.

n. "Site" shall mean the Star Lake Canal Superfund Site, which consists of Molasses Bayou and two industrial waste canals (Star Lake Canal and Jefferson Canal), located at or near the cities of Port Neches and Groves in Jefferson County, Texas and generally shown on the map included in Appendix B.

o. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

12. Settling Party shall pay to the EPA Hazardous Substance Superfund the principal sum of \$20,000, plus an additional sum for Interest as explained below. Payment shall be made in yearly installments. Each installment, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the effective date of this Agreement as defined in Paragraph 39. The first payment of \$4,000 shall be due within 30 days of the effective date of this Agreement. Subsequent payments of \$4,000 plus interest shall be due on January 1 of each year thereafter until all payments have been made. Settling Party may accelerate these payments, and interest due on the accelerated payments shall be reduced accordingly.

Payment shall be made by certified or cashier's check made payable to a Special Account titled the "Star Lake Canal Superfund Site Special Account." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID # 06GY, and the EPA docket number for this action, and shall be sent to:

EPA Superfund - Star Lake Canal Superfund Site 06GY
CERCLIS # TX0001414341
Superfund Accounting
P.O. Box 371099M
Pittsburgh, PA 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND

At the time of each payment, Settling Party shall also send notice that such payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID # 06GY and the EPA docket number for this action.

13. The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited by EPA in the Star Lake Canal Special Account within the EPA Hazardous Substance

At the time of each payment, Settling Party shall also send notice that such payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID # 06GY and the EPA docket number for this action.

13. The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited by EPA in the Star Lake Canal Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Settling Party shall send notice that payment has been made in accordance with Paragraph 12 above, and the payment shall be deposited by EPA in accordance with this Paragraph.

VII. FAILURE TO COMPLY WITH AGREEMENT

14. If Settling Party fails to make any payment required by Paragraph 12 by the required due date, all remaining installment payments and all accrued interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

15. Stipulated Penalty.

a. If any amounts due under Paragraph 12 are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the interest required by Paragraph 14, \$2,500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID # 06GY, and the EPA docket number for this action, and shall be sent to:

EPA Superfund - Star Lake Canal Superfund Site 06GY
CERCLIS # TX0001414341
Superfund Accounting
P.O. Box 371099M
Pittsburgh, PA 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND

c. At the time of each payment, Settling Party shall send notice that such payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID # 06GY and the EPA Docket Number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment; but need only be paid

upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to

comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 12 or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

18. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement), including the first payment required by Section VI, Paragraph 12 (Payment of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Party shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information. This covenant not to sue extends only to Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

19. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 18. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Party's ownership or operation of the Site, or

upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Party; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

20. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 30(b), is false or, in any material respect, inaccurate.

21. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

22. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Texas Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 24 (Waiver of Claims) and Paragraph 27 (Waiver of Claim-splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 19(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

23. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

26. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. SITE ACCESS

28. Commencing upon the effective date of this Agreement, Settling Party agrees to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by Settling Party to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;

- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site; and
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XIV. (Access to Information).

29. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. ACCESS TO INFORMATION

30. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

31. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

33. Until 10 years after the effective date of this Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

34. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records, and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

XV. CERTIFICATION

35. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims

relating to cleanup of the Site.

XVI. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA:

Chief, Superfund Cost Recovery Branch (6SF-AC)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, TX 75202

As to Settling Party:

Charles Cogliandro, President
Calabrian Corporation
5500 Highway 366
Port Neches, TX 77651

XVII. INTEGRATION/APPENDICES

37. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A is a list of the financial documents submitted to EPA by Settling Party; etc.

XVIII. PUBLIC COMMENT

38. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.


XIX. EFFECTIVE DATE

39. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 38 has closed and that comments

received, if any, do not require modification of or withdrawal by the United States from this Agreement.

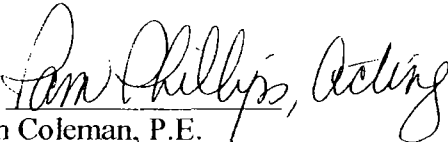
IT IS SO AGREED:

Calabrian Corporation

By: 
[Name] CHARLES E. COGLIANORO

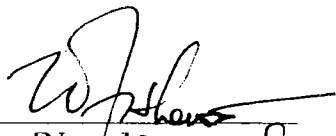
10/9/06
[Date]

U.S. Environmental Protection Agency

By: 
[Name] Sam Coleman, P.E.
Superfund Division Director
U.S. EPA Region 6
Dallas, Texas

10/27/06
[Date]

U.S. Department of Justice

By: 
[Name] DEPUTY SECTION CHIEF
[Insert title of appropriate DOJ official]
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

1/4/07
[Date]

By: _____
Kenneth Long
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

[Date]

received, if any, do not require modification of or withdrawal by the United States from this Agreement.

IT IS SO AGREED:

Calabrian Corporation

By: _____
[Name]

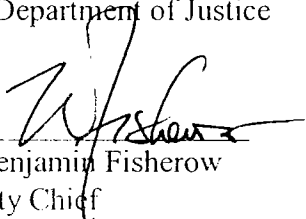
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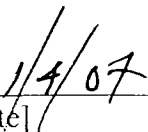
U.S. Environmental Protection Agency

By: _____
Sam Coleman, P.E.
Superfund Division Director
U.S. EPA Region 6
Dallas, Texas

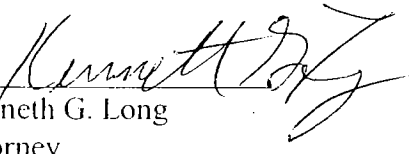
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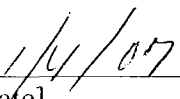
U.S. Department of Justice

By: 
W. Benjamin Fisherow
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530



[Date]

By: 
Kenneth G. Long
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611



[Date]